

February 4, 2015

Johanna N. Canlas  
City Attorney  
City of Solana Beach  
635 South Highway 101  
Solana Beach, CA 92075-2215

Re: Your Request for Advice  
**Our File No. A-15-010**

Dear Ms. Canlas:

This letter responds to your request for advice on behalf of Councilmember Peter Zahn regarding the conflict of interest provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

### **QUESTION**

Does Solana Beach Councilmember Zahn have a conflict of interest under the Act that prohibits him from participating in a council decision regarding a new development project?

### **CONCLUSION**

No. Councilmember Zahn does not have a financial interest in the decision. The Act therefore does not prohibit his participation.

### **FACTS**

You are the City Attorney for the City of Solana Beach in San Diego County. You write on behalf of Councilmember Zahn regarding a decision coming before the council on a new

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

development project. H.G. Fenton Company is an applicant for discretionary land use permits to develop its property, Solana Highlands Apartments, located within the jurisdiction of the City of Solana Beach. The President and CEO of H.G. Fenton Company, Mike Neal, and Councilmember Zahn serve together on the Advisory Board of the Zahn Center for Innovation (Zahn Innovation Center) at San Diego State University (SDSU). Zahn Innovation Center Board Members are volunteers and are not compensated.

The Zahn Innovation Center is named after Councilmember Zahn's father, Irwin Zahn, and was established with a gift of \$725,000 from the Moxie Foundation and an additional gift of \$150,000 from the Kerr Family. More recently H.G. Fenton Company made a donation to the Campanile Foundation (SDSU) for the establishment of the H.G. Fenton Idea Lab, a prototyping facility that is part of the Zahn Innovation Center. In addition to serving on the Zahn Innovation Center Board, Councilmember Zahn is the current President and a member of the Board of Directors of the Moxie Foundation. Councilmember Zahn is not employed by H.G. Fenton Company and has not received any income from H.G. Fenton Company. Councilmember Zahn does not hold any stock or hold any positions with H.G. Fenton Company. Moreover, the project area is not within 500 feet of any real property owned by Councilmember Zahn.

### ANALYSIS

The Act's conflict-of-interest provisions ensure that public officials will "perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has an interest specified in Section 87103. They are:

- (a) Any business entity in which the public official has a direct or indirect investment worth \$2,000 or more.
- (b) Any real property in which the public official has a direct or indirect interest worth \$2,000 or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$460 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Under your facts, Councilmember Zahn does not have a financial interest in his volunteer board positions or the Zahn Innovation Center. The Act does not prohibit his participation in governmental decisions if he has no related financial interest. Councilmember Zahn may therefore participate in the decisions before the council related to H.G. Fenton Company, as described above.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace  
Assistant General Counsel

By: Heather M. Rowan  
Senior Counsel, Legal Division

HMR:jgl